

Memorandum

To : Mr. Allen J. Cummings, Supervisor
IFTA Section MIC:65

From : M. Judith Nelson
Senior Tax Counsel *MJ Nelson*

Subject: Request for Relief from Interest Due to
Natural Disaster

Date: February 10, 1998

I. Introduction. This memo addresses the question of whether the Board is authorized under state law and under the International Fuel Tax Agreement (IFTA) to grant blanket relief from interest when, due to a natural disaster which occurred in the base jurisdiction, interstate carriers fail to timely file IFTA Quarterly Fuel Use Tax Reports (IFTA returns). The question has arisen in the following two situations, and it is likely that similar requests will be made in the future. Last April, the IFTA Commissioner in _____, requested all IFTA jurisdictions to waive interest on late returns on a blanket basis due to the severe flooding along the _____ River. Recently, we received a similar request from the IFTA representative in _____ due to the devastating ice storms that have been experienced in the region.

II. Interest under the IFTA Articles of Agreement. The IFTA Articles of Agreement require at Section IX.E. that the base jurisdiction assess interest on all delinquent taxes due to each jurisdiction. For IFTA fleets based in a U.S. jurisdiction, the interest accrues at a rate of one percent per month. For an IFTA fleet based in _____, the interest accrues at a rate equal to the Canadian Federal Treasury Bill rate plus two percent adjusted every calendar quarter. All interest collected is to be remitted by the base jurisdiction to the appropriate jurisdiction.

Interest on delinquent tax owed to the base jurisdiction may be waived by the base jurisdiction "[i]f a licensee can demonstrate a return was filed late because of misinformation given to the carrier by the base jurisdiction" and the base jurisdiction's law allows the waiver. As for interest on taxes owed in other jurisdictions, Section IX.F. authorizes the base jurisdiction to waive interest upon receipt of written approval from the jurisdiction to which tax is owed.

III. Interest under the Diesel Fuel Tax Law. California Revenue and Taxation Code Section 60207¹ provides that any person who fails to timely pay tax due shall pay interest on the tax at the "modified adjusted rate per annum" as defined in Section 6591.5. That rate is adjusted every six months. Section 60208 requires the payment of interest during the period when a due

¹ Unless otherwise noted, all statutory references are to the California Revenue and Taxation Code.

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date has been extended, and Section 60302 requires the payment of interest following the issuance of a notice of determination of tax due.

Under Section 60211 of the Diesel Fuel Tax Law, relief may be granted from payment of interest when the Board finds that the person's failure to timely make a return or payment "...was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect...". However, the law requires that the person seeking to be relieved of interest must "...file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases the claim for relief."

IV. Construction and Administration of IFTA Provisions in Conjunction with California Fuel Tax Laws - IFTA Defers to States' Laws. Section 9405 provides that "[w]henver the Use Fuel Tax Law or the Diesel Fuel Tax Law is inconsistent with the IFTA Articles of Agreement or this chapter, [Part 3.5, Division 2, Chapter 2 (Commencing with Section 9405) of the Rev. and Tax. Code] the IFTA Articles of Agreement or this chapter, shall prevail, except where prohibited by the California or United States Constitution." Section 9407 then limits the purposes for which the chapter may be used. Included among the activities that may be governed by the IFTA Agreement and the chapter are the following:

"9407(a)....(8) Specify reporting requirements, due dates of returns, interest and penalty rates, and provisions for failure to file returns."

The IFTA Agreement specifies the interest on late returns and provides that relief from interest may be granted with approval of the affected member jurisdiction. The requirement that the base jurisdiction obtain written approval from the other jurisdictions before granting relief of interest on delinquent taxes indicates to me that the IFTA Agreement itself is deferring to the laws of the various member jurisdictions on this issue.

V. Is Blanket Relief From Interest Authorized? As previously stated, the Board has now had two requests for a blanket authorization to relieve interstate carriers from the interest on delinquent payments of tax. Both requests appear to assume that severe natural disasters in the base jurisdictions will result in the late payment of taxes by interstate carriers based in those jurisdictions. Based on that assumption the IFTA Commissioners in those jurisdictions have requested written approval from California to relieve their IFTA licensee interstate carriers of interest on late payment of taxes owed to California.

Under California law, there are two prerequisites to be met before the Board may grant relief from interest in the event of a disaster. First, the Board must make a finding that the "person's failure to timely make a return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect." Second, the person seeking relief must file the statement under penalty of perjury. The acknowledgment of the disaster and the blanket approval sought by the base jurisdictions on behalf of their IFTA licensees cannot

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meet these statutory requirements. Thus, it is my view that without a change in the California law to specifically authorize the grant of relief from interest for late payment of taxes by a certain group of taxpayers, such as IFTA licensees, the Board is without authority to provide such written approval.

While the board may not grant blanket relief from interest, it could facilitate the process if it were to prepare and provide a form on which an affected IFTA carrier could make a statement under penalty of perjury to be individually filed with the Board as required by Section 60211. These forms could be sent to base jurisdictions that have experienced disasters. The forms could be distributed to taxpayers with instructions that the taxpayer may seek relief from interest on the tax by filing the statement under penalty of perjury directly with the Board.

MJN:es

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